

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FRANKLIN ENTERPRISES, INC.,

No. C 08-04797 SI

Plaintiff,

**ORDER DENYING DEFENDANTS'  
MOTION TO DISMISS**

v.

PASSPORT CAPITAL LLC, et al.,

Defendants.

On February 6, 2009, the Court heard oral argument on defendants' motion to dismiss plaintiff's complaint. Defendants generally argue that the claims in the complaint are based on fraud or sound in fraud and do not meet Rule 9(b)'s heightened pleading requirement. Even if the defendants are correct that eight of the nine claims sound in fraud, the complaint is drafted with sufficient particularity. The complaint, in its entirety, sufficiently alleges specific misrepresentations including who made them, when they were made, and why, as required under the heightened pleading standard. *See* Pl.'s Complaint ¶¶ 24, 16, 17, 20, 21, 22, etc.

Defendants also argue that plaintiff suffered no harm because the contract was for two years and has not yet matured. Plaintiff seeks rescission of the contract as a remedy and also alleges that defendants' movement of the possible date of maturation is part of the harm and fraud. The Court finds this a sufficient allegation of harm as a pleading matter. At this stage in the litigation proceedings, the plaintiff has sufficiently plead facts to state a claim for relief and put the defendants on notice of the allegations against them.

Having considered the arguments of the parties and the papers submitted, and for good cause shown, the motion is DENIED. **Defendants shall file answers on or before March 6, 2008.**

**IT IS SO ORDERED.**

Dated: February 24, 2009



SUSAN ILLSTON  
United States District Judge